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OPERATIONS OF THE WATER DELIVERY SYSTEM:
THE CALFED RECORD OF DECISION – AND
ANTICIPATED WATER DELIVERIES FOR 2002

Presented to the
Subcommittee on Water and Power
U.S. House of Representatives
Committee on Resources

February 14, 2002

Mr. Chairman, members of the Committee: Good morning. I am Daniel Nelson, Executive Director of the San Luis & Delta-Mendota Water Authority, and I appreciate the opportunity to appear before you today to discuss an issue of vital importance to the State of California, indeed, the nation.

At the outset Mr. Chairman, I would like to extend our appreciation for your efforts to ensure that the CALFED Program is implemented in a balanced and innovative manner that links progress on environmental restoration and enhancement with progress on water supply and water quality improvements. Farmers on the westside of the San Joaquin Valley are particularly appreciative of your efforts to ensure a 70% allocation to south-of-Delta Central Valley Project agricultural service contractors in normal years. Inclusion of section 103(a)(4) in H.R. 3208 which provides this supply will help sustain agriculture in the San Joaquin Valley, an industry that provides significant benefit to the state and the nation, during the first four years of Stage 1 of the CALFED Program. From this floor, we expect that the CALFED Program will restore our water supplies to a level adequate to meet the needs of our region. For the reasons that I will describe in my testimony, without the inclusion of section 103(a)(4) in H.R. 3208, there would be little hope that the water supply improvements promised in the Framework for Action and the CALFED Record of Decision will ever be realized.

The San Luis & Delta-Mendota Water Authority

The San Luis & Delta-Mendota Water Authority is a joint powers authority organized under California Law. Its 32 member agencies are water and irrigation districts that contract with the Bureau of Reclamation for the receipt of water from the Central Valley Project. These member agencies provide water for irrigation to approximately 1,200,000 acres of land within the western San Joaquin Valley, San Benito County, and Santa Clara County and water for municipal and industrial use throughout the same area. The area served by the Authority's member agencies is among the most fertile, productive and diversified in the nation. Rich soil, a good climate, and innovative farming techniques have helped to place the area served by these agencies among the most productive farming regions in the nation. Farmers in this region produce over 50 different commercial fiber and food crops sold for the fresh, dry, canned or frozen food markets; domestic and export. With an adequate water supply they could produce crops worth more than \$2 billion dollars. One of the Authority's member agencies, Santa Clara Valley Water District, is responsible for providing water to 1.8 million people and to the vital high-tech computer industry known as "Silicon Valley". This multi-billion dollar industry is critical to the economic health of California and the nation.

Both agriculture and the computer chip manufacturing industry depend on adequate, reliable supplies of water. These water supplies, and consequently the agriculture and industry they support, are at risk. It was our hope that the CALFED Program would restore the adequacy and reliability of the water supply necessary to sustain agriculture and industry within the service areas of our member agencies, but we were wrong. The CALFED Program has failed to meet its water supply objectives for south-of-Delta Central Valley agricultural water service contractors, and unless the Department of the Interior modifies the manner in which it is implementing the Central Valley Project Improvement Act, there is little chance the Program will ever achieve those objectives. Like every other region of the arid west, the ability of our farmers to produce crops and generate this economic activity depends on the availability of an adequate, reliable source of water.

Historical Reliability and Adequacy

To put this discussion in historical perspective, it is necessary to point out that until 1991, deliveries to the Authority's member agencies were highly reliable. For a period of nearly forty years, from the early 1950s to 1991, water supplies for south-of-Delta CVP ag service contractors were reduced only two times, in 1977 and 1978. These reductions were a result of the extraordinary drought conditions in 1977, the driest year on record in California. However, in 1991 a new era of Project operations began.

Reductions in Supply Due to Regulatory Constraints

In 1991, the winter-Chinook salmon was listed as a threatened species under the federal Endangered Species Act. Because of this listing, new restrictions were imposed on the Project. In 1992, the Delta smelt was listed as a threatened species under the federal Endangered Species Act, and additional restrictions were imposed on the Project. Also in 1992, the Central Valley Project Improvement Act was passed by Congress and signed into law by former President George Bush.

The purposes of this Act were:

- (a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
- (b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;
- (c) to improve the operational flexibility of the Central Valley Project;
- (d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;
- (e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;
- (f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

Bay-Delta Accord

California water users were faced with several over-lapping regulations and an unorganized array of federal and state agencies trying to implement them. Simply stated, there was chaos. The Authority teamed with the Metropolitan Water District of Southern California to initiate discussions with other ag/urban stakeholders, environmentalists, and state and federal agencies. These discussions resulted in the 1994 Bay Delta Accord of which the Authority is one of the signatories. At the time, the Accord was hailed as a revolutionary agreement that would provide for the immediate protection and restoration of the Bay-Delta ecosystem and water supply reliability for water agencies that relied on exports from the Delta. As part of the Accord, south-of-Delta CVP ag service contractors voluntarily committed up to 500,000 acre-feet of water for restoration of the Bay-Delta ecosystem pending the outcome of water right hearings to determine the responsibility of other water agencies to provide water for this purpose. Under the Accord standards, they could expect that on average they would receive 75-80 percent of their existing contract amounts. However, their voluntary commitment to provide 500,000 acre-feet for restoration of the Bay-Delta was

made in reliance upon former Secretary of the Interior Bruce Babbitt's promise, "*Basically, what we're saying is a deal is a deal. We've made a deal, and if it turns there are additional requirements of any kind, it will be up to the United States and the federal agencies to come up with the water.*" (Emphasis added.)

Breach of the Accord

Unfortunately, Secretary Babbitt's commitment was soon forgotten. In November 1997, Interior released a final administrative plan for the implementation of CVPIA section 3406(b)(2) that would have taken additional water away from south-of-Delta CVP contractors. Because the Authority concluded this plan was inconsistent with the law, it challenged the plan in court and prevailed. In response to the U.S. District Court's judgment that the 1997 plan was inconsistent with the law, in October 1999, Interior released another final decision on the implementation of CVPIA section 3406(b)(2). Under the October 1999 plan, which has been implemented pending the outcome of another Authority legal challenge, water supplies for south-of-Delta CVP ag contractors will average 45 to 50 percent of their existing contract amounts. In general, the CVPIA has been implemented by Interior in a manner that has reallocated more than 1,000,000 acre-feet of CVP water away from farms, ranches and rural communities that relied upon this water for decades. Moreover, virtually all of the water supply reductions that have resulted from implementation of the Act have been imposed on south-of-Delta Central Valley Project agricultural water service contractors.

Most of my comments today will focus on water shortages and CALFED assurances to these ag service contractors, since they have suffered the greatest impacts. But it should be recognized that implementation of CVPIA has also resulted in chronic shortages for south-of-Delta municipal and industrial contractors, poorer water quality in San Luis Reservoir for drinking water treatment, and even the threat of interruptions in supply to Silicon Valley during the summer months.

Disproportionate Impacts

The disproportionate impact of these regulatory requirements on the water supplies of west side farmers was recognized by Governor Gray Davis and former Secretary of the Interior Babbitt in June 2000, when they signed the CALFED document entitled "California's Water Future, A Framework for Action." The framework correctly noted that south-of-Delta CVP ag contractors have been "disproportionately affected by recent regulatory actions." A key commitment in the Framework was a provision stating that during the first four years of Stage 1 of the CALFED Program, south-of-Delta CVP ag contractors would receive in normal years 65 to 70 percent of their contractual water supplies. In other water year types there would be comparable improvements. The Authority and its member agencies supported the framework based on this commitment. But somehow between the signing of the framework agreement and the issuing of the formal Record of Decision and the allocation to south-of-Delta CVP ag contractors in the first year of Stage 1, the commitment to restore that portion of our water supplies was forgotten.

In the first year of Stage 1 of the CALFED Program, notwithstanding near normal water supply conditions, south-of-Delta CVP ag contractors received an initial allocation of 45 percent, which was subsequently raised to 49 percent. We are now approaching the second year of Stage 1 of the CALFED Program, and on January 25, 2002, Reclamation projected a 45 percent allocation for south-of-Delta CVP ag contractors and a 75 percent allocation for M&I contractors despite a forecast that this water year will be an above-normal year. Meanwhile, b(2) was allocated 100%. This announcement is a clear indication that absent clear direction from Congress, the Fish & Wildlife Service, which is responsible for prescribing fish and wildlife actions under CVPIA, will not allow the Bureau of Reclamation to take the discretionary actions required to

accomplish the water supply objectives established by the Framework for Action and the CALFED ROD.

This conclusion is based on the negotiations among federal and state agencies that led to the Framework for Action and the technical analyses on which Interior based its conclusion that it could provide an additional 15 percent allocation to south-of-Delta CVP ag contractors in normal water years with comparable improvements in other year types.

On March 8, 2000, during discussions that preceded execution of the Framework for Action the Regional Director of the Bureau of Reclamation made a presentation concerning the manner in which Interior was implementing CVPIA. His conclusions were as follows:

It is important to ensure Interior's b(2) policy is implemented in a balanced manner that encourages sound water management practices and eliminates uncertainties for other CVP water users. The existing policy:

- (a) focuses the majority of the water supply impacts to a small amount of CVP contractors;
- (b) results in greater impacts to CVP delivery capability in wetter periods, thereby limiting ability to implement sound water management practices (e.g., groundwater banking, surface water storage, etc. which are critical for allowing water users to maintain stable water supplies during drought periods);
- (c) incorporates real-time decision-making and reset accounting measures that create water supply uncertainties for farmers during the onset of the irrigation season;
- (d) provides preferential treatment for b(2) water which may be inconsistent with the CVPIA's intent;
- (e) allows b(2) water to be rescheduled without considering potential impacts to other CVP water users; and
- (f) results in the State of California's ability to capture b(2) water.

Changes to the existing b(2) policy should be considered to ensure that Interior is implementing b(2) in a balanced manner that encourages sound water management practices and reduces uncertainties for other CVP water users.

A copy of Regional Director Snow's presentation is attached hereto as Appendix 1, and I request that it be made part of the record.

Improved Water Supplies Resulting from the Exercise of Discretion

To determine whether a more balanced implementation of the CVPIA could be achieved, the CALFED agencies conducted technical analyses. These analyses established that by exercising existing discretion, water supplies for south-of-Delta CVP contractors could be increased in normal water years by 15 percent, to 65 to 70 percent, with comparable improvements in other water year types. Further, these increases could be achieved in a manner consistent with existing law, including the CVPIA, the Endangered Species Act, and the Clean Water Act, and without doing any harm to environmental resources or reducing water supplies to other CVP contractors. However, in actual CVP operations, the Fish & Wildlife Service has refused to allow Reclamation to take the discretionary actions required to accomplish the water supply improvements that were achieved in the technical analyses. It is principally for this reason that in the first year of Stage 1 of the CALFED Program south-of-Delta CVP ag contractors receive only a 49 percent allocation and in the second year of Stage 1 of the CALFED Program Reclamation projects that it will be able to allocate only 45 percent to these contractors. In other words, CVPIA is still being implemented in the manner that led the Regional Director to conclusions expressed on March 8, 2000.

For the 2002 water year, Reclamation and south-of-Delta CVP ag contractors have identified numerous discretionary actions that would improve water supplies for these contractors. These actions, which include use of (b)(2) water with the Environmental Water Account and reducing the quantity of (b)(2) water used this year under section 3406(b)(2)(C) and 3406(b)(2)(D), when combined with the changes to Interior's (b)(2) accounting decision ordered by the District Court, could increase our water supplies by as much as 30 percent.

Objective Science Review

The recent release of the National Academy of Science review of the science supporting Klamath fishery actions has stirred ongoing concerns in California that many of the fishery actions and regulations are without a scientific foundation. For years stakeholders have been requesting a thorough review of the science underlying environmental requirements that are reducing water supplies by over a million acre feet. For example:

- Water users have waited for the State Water Resource Control Board to conduct its triennial review of its 1996 Delta requirements whose underlying relationships have been significantly altered since the arrival of the Asian clam.
- Water users have requested a review of the underlying science of Delta water project requirements in the Garamendi Process Fish Group in mid-1997 and were told by the federal agencies that that would not be a function of the group.
- Water users requested an evaluation of population level effects in CALFED's 1999 Water Management Development Team process and were told by the federal agencies that it could not and would not be done.
- Water users have requested a revision of the 1995 Native Fishes Recovery Plan, many of whose underlying premises have changed, but the federal agencies refuse to conduct such a review.
- Water users assumed that a portion of the \$50 million dollars spent during the five-year development stage of the CALFED program would be spent reviewing the science underlying water project requirements, but no such review was conducted.
- Agriculture and Urban Water Users (ag/urban) through the Association of California Water Users

(ACWA) produced a briefing book showing how to compare the fish benefit/cost ratio of Delta water project requirements to other fish measures. We presented data showing benefit/cost ratios for selected non-water-related actions that were 10 to 100 times more than those that affected water supplies. We hoped for some interest from the federal and state fish agencies. Instead, they were initially defensive and ultimately dismissive.

- Although the CALFED Science Program has made positive contributions in some areas it has not initiated, nor has it indicated that it will initiate a review of the science underlying the CALFED ROD Regulatory Baseline, despite ongoing requests from water users.

We firmly believe that the Klamath situation is just the tip of the iceberg and agree with Congressman Cal Dooley that a National Academy of Sciences type review is long overdue.

- Calfed Package.

I must also point out that without the restored water supplies promised by the Framework for Action, the CALFED Program will be of little benefit to south-of-Delta CVP ag service contractors. In fact, the projects identified by the CALFED ROD that involve increasing storage and exchanges in the upper San Joaquin River would further reduce water supplies for south-of-Delta CVP ag contractors. It is ironic that agencies opposing the enactment of section 103(a)(4) because they contend that it might result in reduced supplies for them enthusiastically support the development of projects that will without question reduce water supplies for south-of-Delta CVP ag service contractors. South-of-Delta CVP ag service contractors have been willing to acquiesce to these projects because of the commitment that during the first four years of Stage 1 their water supplies would be restored to 65 – 70 percent in normal water years, with comparable improvements in other year types. It would be from this supply reliability floor that our water supplies would improve.

The CALFED Program has the potential to solve California's greatest water problems. To succeed, each element of the Program must be implemented with equal vigor. This is critically important because, notwithstanding the potential benefits to all Californians that could result from the CALFED Program, if it is implemented in a way that gives priority to any one of its many purposes, the Program will fail. To date, the south-of-Delta CVP ag service contractor water supply reliability element of the CALFED Program seems to have been ignored. The performance of the Fish & Wildlife Service demonstrates that it has continued to give priority to environmental uses of water without regard to the impact of these uses on achieving the restoration of supplies described by the Framework for Action and the CALFED ROD. It has become painfully apparent that a clear expression of congressional direction is required to compel the Fish & Wildlife Service to implement the delicate balance struck by CALFED's Framework for Action

Thank you.